

1 **PRIVILEGED & CONFIDENTIAL**
2 **FOR SETTLEMENT PURPOSES ONLY**

DISCUSSION DRAFT
3 **SEPTEMBER 12, 2001**

SDMS Document ID



2009733

4 **IN THE UNITED STATES DISTRICT COURT**
5 **FOR THE DISTRICT OF MONTANA**
6 **MISSOULA DIVISION**

7 **UNITED STATES OF AMERICA,**

Civ. No. 00-167-M-DWM

8 **Plaintiff,**

9 **vs.**

10 **W.R. GRACE & COMPANY and**
11 **KOOTENAI DEVELOPMENT**
12 **CORPORATION,**

CONSENT DECREE

13 **Defendants.**

14 **I. BACKGROUND**

15 WHEREAS, on September 14, 2000, the United States of America, on behalf of the
16 Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint
17 (the "Complaint") against Defendants W.R. Grace & Company and Kootenai Development
18 Corporation ("Grace," "KDC" or "Defendants") pursuant to the Comprehensive Environmental
19 Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601
20 et seq., seeking immediate, unimpeded entry and access to portions of the Libby Asbestos Site
21 owned and/or controlled by Defendants in and near Libby, Montana, and civil penalties for
22 failure to provide requested access;

23 WHEREAS, on March 9, 2001, this Court issued an Order granting the United States the
24 requested access, thereby resolving the injunctive allegations set forth in the Complaint;

25 WHEREAS, Defendants and other related entities filed petitions for ~~bankruptcy on April~~
26 2, 2001; relief under Chapter 11 of the United States Bankruptcy Code in the United States
27 Bankruptcy Court for the District of Delaware on April 2, 2001 and have been operating as
28 debtors-in-possession since that time;

WHEREAS, by their respective undersigned representatives, Plaintiff and Defendants,

**PRIVILEGED & CONFIDENTIAL
FOR SETTLEMENT PURPOSES ONLY**

**DISCUSSION DRAFT
SEPTEMBER 12, 2001**

having agreed that settlement of this matter has been negotiated by the parties in good faith and that this Consent Decree is fair, reasonable, consistent with applicable law and in the public interest, and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this matter;

THEREFORE, with the consent of the Parties to this Consent Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355; Sections 104(e) and 113(b) of CERCLA, 42 U.S.C. §§ 9604(e) and 9613(b); and over the parties to this action. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1395, and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b).

2. Solely for the purposes of this Consent Decree and the underlying Complaint, Defendants waive all objections and defenses that they may have to the jurisdiction of the Court or to venue in this District. Defendants shall not challenge this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

3. This Upon approval of this Consent Decree by the Delaware Court and this Court, this Consent Decree shall apply to and be binding upon the Parties and their successors and assigns. In any action to enforce the terms of this Consent Decree, Defendants shall not raise as a defense the failure of their officers, directors, agents, servants, contractors, or employees to take any actions necessary to comply with the provisions hereof. ~~Upon~~ Subject to the approval ~~by the Bankruptcy Court, of~~ this Consent Decree shall by the Delaware Court, the Consent Decree shall also be binding on any subsequently appointed trustee, custodian or receiver and shall survive any conversion or dismissal of the Bankruptcy Case.

4. No change in ownership of the Site or any portion thereof shall in any way alter ~~Defendants'~~ Defendants' obligations or rights under this Consent Decree; nor shall any change in

**PRIVILEGED & CONFIDENTIAL
FOR SETTLEMENT PURPOSES ONLY**

**DISCUSSION DRAFT
SEPTEMBER 12, 2001**

corporate status or ownership affect Defendants obligations or rights under this Consent Decree.

IV. DEFINITIONS

5. Unless otherwise expressly stated, the terms used in this Consent Decree that are defined in CERCLA, or in regulations promulgated under CERCLA, shall have the meanings set forth in such definitions.

6. Whenever the terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

"Alternative Care" shall mean that care provided in an extended care facility or a skilled nursing facility as described in W.R. Grace's Libby Medical Plan (revision 004).

"Bankruptcy Case" shall mean those bankruptcy cases presently pending in the ~~Bankruptcy~~ Delaware Court captioned In re W.R. Grace & Co., et al., Case No. 01-01139 ~~(JFF)(Banker)(JFF)(D. Del.)~~.

~~"Bankruptcy Delaware Court"~~ shall mean the United States ~~Bankruptcy~~ District Court for the District of Delaware where Defendants' Chapter 11 Bankruptcy cases are currently pending.

"CERCLA" means the Comprehensive Environmental Response, Conservation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

"Consent Decree" or "Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree controls.

"Coverage" shall mean the provision of the following medical benefits: 1) For those individuals meeting the terms of eligibility for screening under ATSDR's (defined term?) 2000-2001 health screening program in Libby, Montana, the payment of the costs associated with an annual screening for asbestos-related disease which results in Negative Findings; 2) For those individuals meeting the terms of eligibility for screening under ATSDR's 2000-2001 health screening program in Libby, Montana, payment of the costs associated with an annual screening for asbestos-related disease which results in Equivocal Findings and the costs of any further

**PRIVILEGED & CONFIDENTIAL
FOR SETTLEMENT PURPOSES ONLY**

**DISCUSSION DRAFT
SEPTEMBER 12, 2001**

medical testing prescribed by a qualified doctor which results in Negative Findings; 3) For those people who are Eligible Individuals with Qualifying Medical Conditions under W.R. Grace's Libby Medical Program, Revision 004, the payment of a subsidy, based on income, for costs associated with Alternative Care beyond that provided under W.R. Grace's Libby Medical Program.

"Day" shall mean a calendar day unless expressly stated to be a Working Day. "Working Day" shall mean a day other than a Saturday, Sunday or federal or state holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday or federal or state holiday, the period will run until the close of business of the next Working Day.

"Defendants" shall mean W.R. Grace & Company and Kootenai Development Corporation.

"Eligible Individual" shall mean an individual who worked in the Libby Mine or Mill, or was the spouse or legal dependent of someone at the time he or she worked in the Libby Mine or Mill, or lived or worked within a 20-mile radius of the Libby Mine or Mill for at least six ~~(12)~~(6) months at any time before January 1, 2000, and who meets the other criteria described in W.R. Grace's Libby Medical Plan (revision 004).

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Equivocal Findings" shall mean results of medical testing which do not conclusively show a Qualifying Medical Condition, but which lead a qualified physician to determine that further medical testing is necessary.

"Funds" shall mean the \$2,750,000 placed into an escrow account by Defendants pursuant to Section VI of this Consent Decree.

"Grace" shall mean Defendant W.R. Grace & Company.

"KDC" shall mean Defendant Kootenai Development Corporation.

"Negative Findings" shall mean results of medical testing which conclusively show that

PRIVILEGED & CONFIDENTIAL
FOR SETTLEMENT PURPOSES ONLY

DISCUSSION DRAFT
SEPTEMBER 12, 2001

an Eligible Individual does not have a Qualifying Medical Condition.

"Paragraph" shall mean a portion of this Consent Decree identified by an arabic number or upper case letter.

"Parties" or shall mean the parties to this Consent Decree: the United States, W.R. Grace & Company and Kootenai Development Corporation.

"Plaintiff" shall mean the United States.

"Qualifying Medical Condition" shall mean those medical conditions defined as Qualifying Medical Conditions within W.R. Grace's Libby Medical Plan (revision 004).

"Section" shall mean a portion of this Consent Decree identified by a roman numeral.

"Site" shall mean the Libby Asbestos Site, located near the town of Libby, Montana. The Site is identified with EPA identification number BC.

"Supplemental Environmental Project" or "SEP" shall mean an environmentally beneficial project not otherwise required by law, as described in the Final EPA Supplemental Environmental Projects Policy, 63 Fed. Reg. 24,796 (1998).

"United States" shall mean the United States of America and its departments and agencies, including the EPA.

"W.R. Grace's Libby Medical Plan" shall mean the plan entitled "GRACE, Libby Medical Program as of April 3, 2000, revision 004."

V. CIVIL PENALTY/ALLOWED CLAIM

7. Upon approval of this Consent Decree by the ~~Bankruptcy~~ Delaware Court and this Court, Plaintiff shall be deemed to have an allowed general unsecured claim against Grace and KDC in the amount of \$71,000.00 in the Bankruptcy Case as a civil penalty ~~without further need to file a proof of claim.~~ Plaintiff shall file a Proof of Claim using Official Form 10, or any form approved for Non-Asbestos Claims by the Delaware Court, as a general unsecured claim in this amount _____ days after entry of this Consent Decree by this Court. Subject to the Delaware Court's approval, EPA's allowed general unsecured claim shall receive the same treatment, without discrimination, as other holders of allowed general

**PRIVILEGED & CONFIDENTIAL
FOR SETTLEMENT PURPOSES ONLY**

**DISCUSSION DRAFT
SEPTEMBER 12, 2001**

unsecured claims and shall not be subordinated. Any payments to the United States on this allowed claim shall be made in the same manner and at the same time as payments being made on any other allowed unsecured claims in Defendants' Chapter 11 cases, by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures and with instructions provided to Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the District of Montana following lodging of this Consent Decree. Payments shall reference USAO File Number _____, EPA Region and Site Spill ID Number BC and DOJ Case No. 90-11-2-07106/1. Any payments received by the Department of Justice after 3:00 p.m. (Eastern Time) shall be credited on the next business day. Defendants shall send notice to EPA and the Department of Justice that payment has been made in accordance with Section XI (Notice) and to:

Regional Financial Manager
U.S. EPA Region 8
Mail Code TMS-F
999 18th Street, Suite 300
Denver, CO 80202

Cost Recovery Manager
U.S. EPA Region 8
Mail Code ENF-T
999 18th Street, Suite 300
Denver, CO 80202

8. Civil penalties paid pursuant to this Consent Decree shall not be deductible for purposes of Federal or State taxes.

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

A. Supplemental Environmental Project Description

9. Not later than thirty (30) days after entry of this Consent Decree, Defendants shall place \$2,750,000 (the "Funds") in an interest bearing escrow account at XXX Bank to be used to fund the SEP described in this Section.

10. Not later than thirty (30) days after entry of this Consent Decree, Defendants shall submit to EPA for review and approval drafts of necessary corporate documents to create a Montana non-profit corporation to administer expenditures of the Funds for Coverage as defined in this Consent Decree. Defendants will also submit for review and approval a draft contract between Defendants and that non-profit corporation that shall detail corporate responsibilities, duties of the non-profit's board of trustees, and Defendants' oversight responsibilities. [Need to clarify ongoing responsibility of defendants, EPA, and trustees]

11. Not later than ninety (90) days after entry of this Consent Decree, Defendants

**PRIVILEGED & CONFIDENTIAL
FOR SETTLEMENT PURPOSES ONLY**

**DISCUSSION DRAFT
SEPTEMBER 12, 2001**

shall submit to EPA the names of nominees for board of trustees positions, such nominations having been solicited by advertisements in local newspapers. The United States will notify Defendants of board of trustee selections within thirty (30) days of receipt of the nominations.

12. Not later than one hundred and thirty (130) days after entry of this Consent Decree, Defendants shall file all necessary papers to create the non-profit corporation.

13. Defendants' contract with the non-profit corporation shall require: 1) the board of trustees to select a program administrator within one hundred and eighty (180) days of entry of this Consent Decree; 2) the board of trustees to approve a medical plan to implement the Coverage within two hundred and forty (240) days after entry of this Consent Decree; and (3) implementation of the medical plan within two hundred and seventy (270) days after entry of this Consent Decree.

14. ~~It is the intent of the Parties that the~~ The medical plan ~~to~~ shall be implemented by the board of trustees as provided in the previous paragraph in order to cover care that is not provided in W.R. Grace's Libby Medical Plan.

15. The board of trustees can expand the coverage of the medical plan if W.R. Grace's Libby Medical Plan is terminated. The board of trustees can modify the Coverage provided that it does not overlap provisions of W.R. Grace's Libby Medical Plan.

16. Defendants' total expenditure for the SEP shall be limited to the \$2.75 million payment referenced in Paragraph 9, plus including any and all administrative expenses. ~~in implementing the project, forming, monitoring performance, completing required reports, or related administrative expenses.~~ All administrative expenses incurred shall be paid by, or reimbursed by, the non-profit corporation. [Review structure and procedures for this paragraph].

B. General Supplemental Environmental Project Provisions

17. By signing this Consent Decree, Defendants certify that they are not required, and have no liability, under any federal, state or local law or regulation or pursuant to any agreements or orders of any court, to perform or develop the SEP identified in Section VI of this Consent

**PRIVILEGED & CONFIDENTIAL
FOR SETTLEMENT PURPOSES ONLY**

**DISCUSSION DRAFT
SEPTEMBER 12, 2001**

Decree. Defendants further certify that the SEP identified in Section VI of this Consent Decree they have not received, [What is missing????] and will not in the future seek or receive, credit as a SEP or other penalty offset in any other enforcement action for such SEPs.

18. Defendants shall submit an Annual Report to EPA on or before January 31 of each year that this Consent Decree is in effect. The Annual Report shall include an overview of the Work accomplished in the previous calendar year and a statement indicating the remaining balance in the escrow account.

19. Defendants shall submit a SEP Completion Report to EPA within thirty (30) days of the depletion of funds in the escrow account. The SEP Completion Report shall contain a certification that the project has been fully implemented pursuant to the provisions of this Consent Decree.

20. Any written public statement, ~~oral or written~~, made by Defendants or of their representatives regarding or otherwise referencing any project undertaken pursuant to this Section of the Consent Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action undertaken by the United States."

VII. FORCE MAJEURE

21. Defendants shall notify EPA in writing of the occurrence, or expected occurrence, of an event Defendants claim to be a force majeure event as soon as practicable, but in any event within ten (10) days of when Defendants first knew of the event, or should have known of the event by the exercise of due diligence. In this notice, Defendants shall specifically reference this provision of the Consent Decree and describe the anticipated length of the delay, the cause or causes of the delay, the measures taken or to be taken by Defendants to prevent or minimize the delay, and the schedule by which those measures will be implemented. Defendants shall adopt all reasonable measures to avoid and minimize such delays

22. Failure by Defendants to comply with the above notice requirements shall constitute a waiver of Defendants' right to assert force majeure. Notification of any delay, in and

**PRIVILEGED & CONFIDENTIAL
FOR SETTLEMENT PURPOSES ONLY**

**DISCUSSION DRAFT
SEPTEMBER 12, 2001**

of itself, shall not extend the time allowed for meeting any requirement.

23. If EPA agrees that the violation has been or will be caused solely by circumstances beyond the control of, or any entity controlled by, Defendants, including its contractors, and that Defendants could not have foreseen and prevented such delay by the exercise of due diligence, EPA shall extend in writing the time for compliance with the particular requirement(s) affected by the force majeure event by a period not exceeding the length of the delay actually caused by such circumstances. Such an extension does not alter the schedule for any other part of this Consent Decree, except that EPA shall extend the time for performance of other tasks under this Consent Decree that EPA determines will necessarily be delayed as a result of the force majeure.

24. If EPA does not agree with Defendants' claim of force majeure, the Defendants may invoke the Dispute Resolution procedures of this Consent Decree. If the Court determines that the violation has been or will be caused solely by circumstances beyond the control of Defendants or any entity controlled by Defendants, including their contractors, and that Defendants could not have foreseen and prevented such delay by the exercise of due diligence, Defendants shall be excused as to that violation and delay, but only for the delay actually caused by such circumstances.

25. Defendants shall have the burden of demonstrating that the violation has been or will be caused solely by circumstances beyond the control of Defendants or any entity controlled by Defendants, including its contractors, that the duration of the delay caused by such circumstances is or was warranted solely by reason of such circumstances, and that Defendants could not have foreseen and prevented such delay by the exercise of due diligence. Defendants also shall bear the burden of proving the duration and extent of any delay attributable to such circumstances. Absent written approval by the United States, an extension of one compliance date based on a particular event shall not of itself result in an extension of a subsequent compliance date or dates.

26. Unanticipated or increased costs or expenses associated with the performance of

**PRIVILEGED & CONFIDENTIAL
FOR SETTLEMENT PURPOSES ONLY**

**DISCUSSION DRAFT
SEPTEMBER 12, 2001**

Defendants' obligations under this Consent Decree shall not constitute circumstances beyond Defendants' control, or serve as a basis for an extension of time under this Section.

VIII. DISPUTE RESOLUTION

27. Unless otherwise expressly provided for in this Consent Decree, Defendants shall have the right to dispute any decision of EPA under this Consent Decree, and the provisions of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. ~~However, the provisions in this Section shall not apply to actions by the United States to enforce obligations of Defendants that have not been disputed in accordance with this Section.~~

28. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed thirty (30) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when Defendants send a written Notice of Dispute to the United States. Defendant must send the Notice of Dispute to the United States within fifteen (15) days of the decision of EPA that it seeks to dispute.

29. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within ten (10) days after the conclusion of the informal negotiation period, Defendants invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position, any supporting documentation relied upon by Defendants, and any actions which Defendants consider necessary to resolve the dispute.

30. An administrative record of the dispute shall be maintained by EPA. The administrative record shall include the Statement of Position and all of the information provided by Defendants pursuant to the preceding Paragraph, as well as any other documents relied upon by EPA in making its final decision pursuant to the next Paragraph. Where appropriate, EPA

**PRIVILEGED & CONFIDENTIAL
FOR SETTLEMENT PURPOSES ONLY****DISCUSSION DRAFT
SEPTEMBER 12, 2001**

shall allow submission of supplemental statements of position, data, reports, or affidavits, by the parties to the dispute.

31. If EPA concurs with Defendants' position, EPA shall provide written notice of such concurrence to Defendants. If EPA does not concur with the Defendants' position, EPA shall so notify the Defendants in writing, setting forth the basis of its decision. The decision of EPA shall control unless, within fifteen (15) days of receipt of EPA's written determination, Defendants ~~files~~ file a notice of judicial appeal with this Court which shall set forth a

description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to the notice of judicial appeal.

32. In any such judicial appeal, Defendants shall have the burden of demonstrating that the United States' position is an incorrect interpretation of the Consent Decree. The Court shall base its determination pursuant to this Paragraph on the administrative record. The Court may grant relief, or may, upon motion of either party or on its own motion, remand the dispute for further consideration by EPA, including supplementation of the administrative record as appropriate.

IX. PUBLIC ACCESS TO INFORMATION

33. All information and documents Defendants submits to EPA pursuant to this Consent Decree shall be subject to public inspection, unless Defendants identify and support a claim for confidential business information in accordance with 40 C.F.R. Part 2, and rules adopted thereto.

34. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, the public may be given access to such documents or information without further notice in accordance with 40 C.F.R. Part 2, Subpart B.

X. NOTICE

35. Unless otherwise provided herein, notifications to or communications with EPA,

**PRIVILEGED & CONFIDENTIAL
FOR SETTLEMENT PURPOSES ONLY**

**DISCUSSION DRAFT
SEPTEMBER 12, 2001**

or the Department of Justice, shall be deemed submitted on the date they are postmarked and sent either by overnight receipt mail service or by certified or registered mail, return receipt requested.

36. Unless this Consent Decree states otherwise, all notices, submissions, or communications in connection with this Consent Decree shall be addressed as follows:

As to the EPA:

[Insert]

As to the Department of Justice:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
(Reference: DOJ Case No. 90-11-2-07106/1)

As to Defendants:

[Insert]

37. All submissions, reports, or notices required by this Consent Decree to be submitted by the Defendants shall be certified by a responsible corporate official, and accompanied by the following certification:

I certify that the information contained in or accompanying this submission is true, accurate and complete. This certification is based on my personal preparation, review, or analysis of the submission, and/or supervision of persons who, acting on my direct instructions, made the verification that the submitted information is true, accurate and complete.

XI. GENERAL PROVISIONS

38. Complete performance by Defendants of all of their obligations under this Consent Decree shall fully satisfy all civil liability of the Defendants for the violations alleged in the Complaint in this action through the date of lodging of the Consent Decree. Nothing and Defendants shall be fully released and forever discharged of any and all obligations they

**PRIVILEGED & CONFIDENTIAL
FOR SETTLEMENT PURPOSES ONLY**

**DISCUSSION DRAFT
SEPTEMBER 12, 2001**

may otherwise have as alleged in the Complaint. However, nothing in the Consent Decree is

intended, nor shall be construed, to operate in any way to resolve any other liability of

Defendants, including but not limited to:

a. Liability for costs incurred in responding to releases or threats of releases of hazardous substances at the Libby Asbestos Site, including attorneys fees and other costs incurred in obtaining access to the Libby Asbestos Site and prosecuting this action; other than the access which was the subject of the

Complaint;

b. Liability for damages to natural resources; and

c. Any criminal liability.

39. This Consent Decree does not limit or affect the rights of Defendants or the United States as against any third parties.

40. Defendants agree to waive any claim that the access sought and awarded to the United States in this action constitutes a taking of property for which compensation is due, including any claims alleging such a taking under the Tucker Act, 28 U.S.C. § 1491, or the United States Constitution.

41. Any modification of this Consent Decree must be in writing and approved by the Court. Any such written modification must be agreed to and signed by all Parties to this Consent Decree.

42. The provisions of this Consent Decree are not severable. The Parties' consent hereto is conditioned upon the entry of the Consent Decree in its entirety without modification, addition, or deletion except as agreed to by all Parties, in writing.

43. The Parties stipulate that this Consent Decree is entered into for purposes of settlement only and neither the fact that a party has entered into this Consent Decree, nor any of the facts stipulated herein, may be used in this or any other proceeding except to enforce the terms hereof by the parties to this agreement.

XII. DOCUMENT RETENTION

**PRIVILEGED & CONFIDENTIAL
FOR SETTLEMENT PURPOSES ONLY**

**DISCUSSION DRAFT
SEPTEMBER 12, 2001**

44. Defendants agree that they shall preserve, during the pendency of this Consent Decree and for a minimum of three (3) years after its termination, at least one legible copy of all records and documents, including computer tapes, in the possession, custody, or control of its divisions, employees, agents, accountants, contractors, and attorneys, that relate to the performance of Defendants' obligations under this Consent Decree, including, but not limited to, documents embodying or relating to the results of any sampling, tests, or other data or information generated or acquired by Defendants, or on Defendants' behalf.

XIII. RETENTION OF JURISDICTION

45. This Court shall retain jurisdiction to modify or enforce the terms of this Consent Decree or to take any action necessary or appropriate for its construction or execution.

XIV. TERMINATION

46. This Consent Decree shall terminate after Defendants have completed all actions required of Defendants in the Consent Decree. At such time, Defendants shall certify to EPA that Defendants have completed their obligations under the Consent Decree, including the performance of the SEP required in Section __. If EPA agrees, the United States and Defendants shall jointly petition the Court to terminate the Consent Decree. If EPA does not agree, the United States shall provide Defendants with written notification stating the reasons why this Consent Decree should not be terminated. Upon receipt of such notification, any party may submit the issue for Dispute Resolution pursuant to Section VII of this Consent Decree.

XV. JUDICIAL APPROVAL AND OPPORTUNITY FOR PUBLIC COMMENT

47. The settlement reflected in this Consent Decree shall be subject to Bankruptcy Court the Delaware Court's approval pursuant to 11 U.S.C. §§§ 105, 363 and 502 and Bankruptcy Rule 9019. Defendants 2002, 6004 and 9019. Upon agreement on the final terms of this Consent Decree [and solicitation of public comment as outlined in paragraph 48 herein??]. The Parties shall promptly move for Bankruptcy Court the Delaware Court's approval of this Consent Decree and shall present such evidence and legal argument as is reasonably necessary to obtain such approval.

**PRIVILEGED & CONFIDENTIAL
FOR SETTLEMENT PURPOSES ONLY**

**DISCUSSION DRAFT
SEPTEMBER 12, 2001**

48. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days, for public notice and comment in accordance with the provisions of 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments received disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper or inadequate. This Consent Decree shall become effective upon entry by the Court.

49. The time periods outlined herein for performance under Consent Decree, including but not limited to those set forth in Section VI herein, shall not begin to run until the execution of this Consent Decree by Defendants is approved by the Delaware Court, the Public Comment period outlined in paragraph 48 above has passed and this Court enters the Consent Decree.

50. If for any reason the Bankruptcy Delaware Court or this Court should decline to approve this Consent Decree in the form presented, this agreement is void and the terms of the agreement may not be used as evidence in any litigation between or among any of the Parties in this action.

XVI. SIGNATORIES

50 51. The Acting Assistant Attorney General for Environment and Natural Resources of the Department of Justice, and the signatories for the Defendants each certify that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this Decree, subject, on Defendants' part, to approval by the Delaware Court.

51. 52. Upon approval by the Delaware Court of this Consent Decree, Defendants consent to the entry of this Consent Decree without further notice. Defendants further agree not to oppose entry of this Decree by this Court or to challenge any provision of this Decree, unless the United States has notified them in writing that they can no longer support entry of the Consent Decree based on facts or considerations which indicate that this Consent Decree is inappropriate, improper or inadequate.

SO ORDERED THIS ____ DAY OF _____, 2001.

**PRIVILEGED & CONFIDENTIAL
FOR SETTLEMENT PURPOSES ONLY**

**DISCUSSION DRAFT
SEPTEMBER 12, 2001**

United States District Judge

**PRIVILEGED & CONFIDENTIAL
FOR SETTLEMENT PURPOSES ONLY**

**DISCUSSION DRAFT
SEPTEMBER 12, 2001**

Through their undersigned representatives, the Parties agree and consent to entry of the foregoing Consent Decree in United States of America v. W.R. Grace & Company and Kootenai Development Corporation:

FOR PLAINTIFF UNITED STATES OF AMERICA:

JOHN C. CRUDEN [WALKER SMITH?]
Acting Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice

Date: _____

JAMES D. FREEMAN
Trial Attorney
United States Department of Justice
Environmental Enforcement Section
999 18th Street; Suite 945NT
Denver, Colorado 80202
(303) 312-7376

Date: _____

WILLIAM W. MERCER
United States Attorney
District of Montana

By:

VICTORIA FRANCIS
Assistant United States Attorney
District of Montana
2929 Third Avenue North, Suite 400
Billings, Montana 59101
(406) 657-6101

Date: _____

**PRIVILEGED & CONFIDENTIAL
FOR SETTLEMENT PURPOSES ONLY**

**DISCUSSION DRAFT
SEPTEMBER 12, 2001**

Through their undersigned representatives, the Parties agree and consent to entry of the foregoing
Consent Decree in United States of America v. W.R. Grace & Company and Kootenai
Development Corporation:

SYLVIA K. LOWRANCE
Acting Assistant Administrator for Enforcement
and Compliance Assurance
U.S. Environmental Protection
Agency

Date: _____

**PRIVILEGED & CONFIDENTIAL
FOR SETTLEMENT PURPOSES ONLY**

**DISCUSSION DRAFT
SEPTEMBER 12, 2001**

Through their undersigned representatives, the Parties agree and consent to entry of the foregoing Consent Decree in United States of America v. W.R. Grace & Company and Kootenai Development Corporation:

CAROL RUSHIN
Assistant Regional Administrator, ECEJ
U.S. Environmental Protection Agency
Region VIII
999 18th Street
Denver, Colorado 80202-2405

Date: _____

MAX DODSON
Assistant Regional Administrator, EPR
U.S. Environmental Protection Agency
Region VII
999 18th Street
Denver, Colorado 80202-2405

Date: _____

MATTHEW COHN
ANDREA MADIGAN
Enforcement Attorneys
U.S. Environmental Protection Agency
Region VII
999 18th Street
Denver, Colorado 80202-2405

Date: _____

**PRIVILEGED & CONFIDENTIAL
FOR SETTLEMENT PURPOSES ONLY**

**DISCUSSION DRAFT
SEPTEMBER 12, 2001**

Through their undersigned ~~representatives, the Parties agree and consent~~ representative, and subject to the approval of the Delaware Court, the Defendant W.R. Grace & Company agrees and consents to entry of the foregoing Consent Decree in United States of America v. W.R. Grace & Company and Kootenai Development Corporation:

Date: _____

W.R. Grace & Company
[Name, Position & Address]

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**DISCUSSION DRAFT
SEPTEMBER 12, 2001**

Through their undersigned representatives, the Parties agree and consent representative, and
subject to the approval of the Delaware Court, the Defendant Kootenai Development
Corporation agrees and consents to entry of the foregoing Consent Decree in United States of
America v. W.R. Grace & Company and Kootenai Development Corporation:

Date: _____

Kootenai Development Corporation
[Name, Position & Address]

**PRIVILEGED & CONFIDENTIAL
FOR SETTLEMENT PURPOSES ONLY**

**DISCUSSION DRAFT
SEPTEMBER 12, 2001**

----- COMPARISON OF HEADERS -----

-HEADER 1-
Header Discontinued

-HEADER 2-
PRIVILEGED & CONFIDENTIAL DISCUSSION DRAFT
FOR SETTLEMENT PURPOSES ONLY ~~AUGUST 31~~ SEPTEMBER 12, 2001

-HEADER 3-
PRIVILEGED & CONFIDENTIAL DISCUSSION DRAFT
FOR SETTLEMENT PURPOSES ONLY ~~AUGUST 31~~ SEPTEMBER 12, 2001

----- COMPARISON OF FOOTERS -----

-FOOTER 1-
#748620 v1